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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/735,340

12/12/2003

Adam Gold

506512002100

3740

25226 7590 03/15/2010

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EXAMINER

MENDOZA, MICHAEL G

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

03/15/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

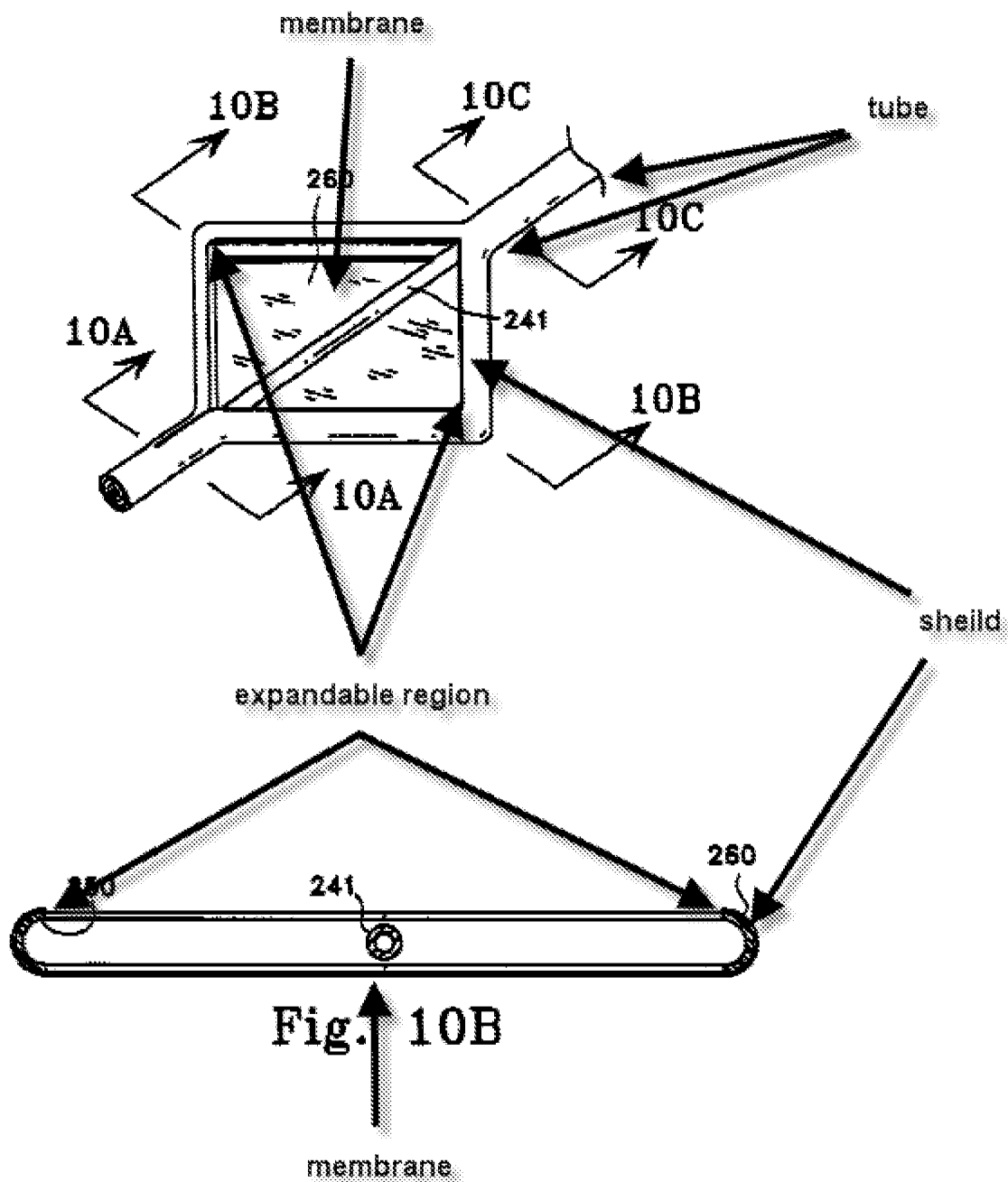
1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/1/2010 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed 3/1/2010 have been fully considered but they are not persuasive.

3. The applicant argues that Buelna does not teach the sealing membrane 260 is not contiguous around the shaft assembly. The claims do not claim the limitation that the sealing membrane is contiguous around the shaft assembly. The claims require the sealing membrane need only span the expandable region. Buelna meets this limitation. The sealing membrane of Buelna spans the bottom portion of the expandable region.

4. The applicant argues that 250 is a flexible tube and not a protective shield. The examiner disagrees. As seen in figs. 10a and 10c; when the device of Buelna is in the low profile position, 250 closes the expandable region and when open is over at least a portion of the expandable region (side and a portion of the top and bottom) therefore reading on the limitation. The examiner considers this area the shield and the remainder of 250 the flexible tube.



***Status of claims***

5. Claims 1-15, 17-20, and 38-55 are pending. Claims 1-5 are withdrawn from consideration.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 6-15, 17-20, and 38-55 are rejected under 35 U.S.C. 102(e) as being anticipated by Buelna et al. 6620177

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

8. Buelna et al. teaches a device for creating a seal in a blood vessel comprising: a low profile shaft assembly (fig. 1), the shaft assembly having an expandable region (figs. 9 & 10) and a sealing membrane (60, 260) spanning the expandable region, the expandable region being deployable from a first low-profile position to a second expanded position (fig. 1, fig. 3); a clamping member (36); a protective shield (250 is over the area of space between 250 in the expanded position, fig. 10b); the expandable region in its second expanded position has a cup shaped configuration (sides and a

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bottom), an elongated hexagonal shape, octagonal shape, oval shape, or a circular shape (col. 6, lines 55-62), the expandable region comprises segments that bow outwardly from the shaft assembly (fig. 9, fig. 10); wherein the bowing segments are formed of a slitted (55) flexible tube; wherein the bowing segments are formed of a super-elastic metal memory; wherein the sealing membrane is reinforced; wherein the shaft assembly further comprises a slide (22); wherein translation movement of the slide can be remotely actuated (col. 12, lines 43-47), wherein the expandable region in its second expanded position corresponds to an area of a blood vessel that is large enough to accommodate multiple anastomosis sites (area size is not specified, large enough is relative); and wherein the shaft assembly further comprises a deployment tube (241, see fig. 10a) in movable in relationship to the expandable region such the translational movement of the deployment tube from a first to a second position deploys the expandable region from the first low profile position to the second expanded position (col. 9, lines 12-23).

### ***Conclusion***

9. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. MENDOZA whose telephone number is (571)272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/M. G. M./  
Examiner, Art Unit 3734

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Supervisory Patent Examiner, Art Unit 3734